

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
26 Federal Plaza  
New York, New York 10007

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In the Matter of :  
 :  
Duane Marine Corp. : Docket No.: OH-II-79-66  
Perth Amboy, New Jersey :  
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Violation of the Oil Pollution Prevention : NOTICE OF VIOLATION  
Regulations issued pursuant to §311(j)(1)(C) : AND ASSESSMENT OF  
of the Clean Water Act, 33 U.S.C. §1321 : CIVIL PENALTY  
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NOTICE OF VIOLATION

THIS IS TO NOTIFY YOU that the United States Environmental Protection Agency (EPA) has reason to believe that Duane Marine Corp. (hereinafter, "Respondent"), with offices located at 26 Washington Street, Perth Amboy, New Jersey 08861 is subject to the Oil Pollution Prevention Regulations, 40 C.F.R. Part 112, promulgated pursuant to §311(j)(1)(C) of the Clean Water Act, 33 U.S.C. §1321(j)(1)(C), and that Respondent has violated §112.3 of the Regulations, and that more specifically, Respondent has:

1. failed to prepare and maintain at its facilities located at Perth Amboy, New Jersey after July 10, 1974, a Spill Prevention Control and Countermeasure (SPCC) Plan as required by §112.3 of the Regulations.
2. failed to fully implement at its above-specified facilities by January 10, 1975, an SPCC Plan as required by §112.3 of the Regulations.

ASSESSMENT OF CIVIL PENALTY

Section 311(j)(2) of the Clean Water Act, 33 U.S.C. §1321(j)(2) and regulations promulgated thereunder, in particular 40 C.F.R. §112.6, provide that violation of 40 C.F.R. §112.3 gives rise to liability for a civil penalty, not to exceed \$5,000 (FIVE THOUSAND DOLLARS) for each day the violation continues.

WHEREFORE, on the basis of the facts presently before the EPA, a civil penalty is hereby proposed to be assessed against Respondent in the amount of \$10,000 (TEN THOUSAND DOLLARS).

MITIGATION OF CIVIL PENALTY ASSESSED

Prior to payment of the penalty proposed to be assessed or the submission of a request for a Hearing, as set forth below, Respondent may, within 15 (FIFTEEN) days of receipt of this Notice, submit to EPA written explanations, information, or other materials

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in answer to the charges made, in mitigation of the penalty assessed, or bearing on its efforts to achieve compliance after notification of the violation. If the information to be submitted includes corrective actions or additional preventive measures to be taken, Respondent shall agree to commit itself to take such measures in as short a time as possible, by means of a written statement to that effect signed by a corporate officer. Such a commitment shall include a proposed schedule of compliance, including a statement of the commitment of the necessary resources made by a duly authorized officer of Respondent of at least the rank of vice-president.

A reassessment of the proposed penalty will be made on the basis of any information received, and a revised assessment of civil penalty for violation of the Oil Pollution Prevention Regulations may be issued if it is determined that a penalty in a different amount is appropriate. If it is determined that the amount of penalty originally proposed should not be changed, Respondent will be so informed. Any written explanations, information, or other materials in answer to the charges made, or in mitigation of the penalty assessed, shall be submitted to the Director, Enforcement Division, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10007.

#### NOTICE OF OPPORTUNITY FOR A HEARING

Within 30 (THIRTY) days of the date of receipt of a Notice of Violation, Respondent may, pursuant to §114.5 of Interim Regulations on Civil Penalties for Violation of Oil Pollution Prevention Regulations, 40 C.F.R. Part 114, published at 39 Fed. Reg. 169, pp. 31602-31603 (August 29, 1974), request a Hearing by submitting a written request, signed by a duly authorized officer, director, agent or attorney, to the Regional Administrator, Region II, EPA. Requests for Hearings shall state the name and address of the person requesting the Hearing, enclose a copy of the Notice of Violation, and state with particularity the issues to be raised at the Hearing. If the request complies with the requirements of 40 C.F.R. §114.5, a Hearing will be scheduled at the earliest possible date at a time and location set by EPA after consultation with Respondent. The Hearing will be conducted in accordance with 40 C.F.R. §114.9. Respondent may be represented by counsel at the Hearing.

Within 30 (THIRTY) days after the conclusion of the Hearing, the Presiding Officer shall issue findings, including the amount of the civil penalty to be assessed. A copy of the Presiding Officer's decision shall be sent to Respondent. The decision of the Presiding Officer shall become the final decision of EPA unless within 15 (FIFTEEN) days from the date of receipt of such decision Respondent appeals the decision to the Administrator. Any appeal must follow the format set forth in 40 C.F.R. §114.11(b). In rendering his decision, the Administrator may adopt, modify, or set aside the decision of the Presiding Officer.

If the decision of the Presiding Officer, or, in the case of an appeal, the Administrator, assesses a civil penalty as part of his decision, such penalty shall be payable within 30 (THIRTY) days of receipt of the Final Order.

#### SETTLEMENT CONFERENCE

Regardless of whether a hearing is requested, at any time after receipt of this Notice of Violation, and prior to the date set for a Hearing, Respondent may confer with EPA concerning either the violation noticed herein or the amount of penalty to be assessed. Should any such conference result in an agreement, that agreement shall be issued as a

written Order on Consent by the Regional Administrator Region II, EPA, and such document shall be referred to as a Settlement Agreement. The issuance of such a Settlement Agreement shall constitute a waiver of Respondent's right to contest through further administrative proceedings any matter stipulated to therein.

#### SPCC PUBLIC FILE

EPA Region II maintains a public spill prevention file at its offices located at 26 Federal Plaza, New York, New York 10007, Room 432. This file contains information on past decisions rendered by EPA both Regionally and on appeal to the Administrator in connection with the hearing procedures set forth above, as well as current spill prevention regulations and pertinent memoranda issued from time-to-time by EPA Headquarters, Washington, D.C. To request access to this file, you may contact Dr. Richard A. Baker, Chief, Permits Administration Branch, Management Division, at the above address or by telephone at (212) 264-9881.


#### FURTHER INFORMATION

If you wish to discuss the possibility of a settlement of this matter, schedule a conference with EPA, or make further inquiries, contact Henry Gluckstern, Attorney, Water Enforcement Branch, EPA Region II, 26 Federal Plaza, New York, New York 10007, or telephone (212) 264-4430.

The failure of the Respondent to respond to this Notice of Violation as prescribed above or to request a hearing as provided for herein will result in an action being commenced by the United States to collect the full amount of the original assessment for this violation. It should be noted that each day on which the violations indicated above have occurred or continue to occur constitutes a new violation, and additional penalties may be assessed therefor. Your commitment to correct deficiencies and to comply with 40 C.F.R. Part 112 is to your advantage.

Dated this 18 day of

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Julio Morales-Sanchez  
Director  
Enforcement Division  
United States Environmental  
Protection Agency  
Region II